

22207

MAY 6 1969

United States Court of Appeals
for the Ninth Circuit

Reuben G. Lenske,

Appellant

v.

Magner Dale Knutsen and Judith
Knutsen,

Appellees

Appellant's Petition for Rehearing

Appeal from the United States District Court
for the District of Oregon
(Robert C. Belloni, JUDGE)

Reuben G. Lenske, 1014 S.W. 2d Ave., Portland, Ore.,
Appellant.

Keane, Haessler, Bauman and Harper, Donald H. Pearlman,
1430 American Bank Building, Portland, Ore.,
Attorneys for Appellees.

FILED

MAY 2 1969

WM. B. LUCK, CLERK

3493

V. 3493

Petition for Rehearing by Reuben Lenske

The court's correct conclusion that Knutsen had no valid damage action against me on account of the mortgage foreclosure suit against him should have been obvious from the beginning. The rest of the court's statements are not necessary for the court's judgment and I would like an opportunity to show the court the wrongness of many of its preliminary statements.

However, that too should not be necessary, for the court should wipe out those statements because of the mootness of the issue regarding the property. In the accompanying affidavit I show that Knutsen did not choose to redeem the property from the Government's foreclosure decree, that no supersedeas bond was filed by me on this appeal, and that the period of redemption of the property expired and that he and he alone could have redeemed and that the Government bid the property in for the amount of its decree. I therefore ask the court to eliminate from its opinion everything but the principle and conclusion that a mortgagor in default has no cause of action for damages against a third party merely because the mortgagee chooses to exercise its clear right to foreclose the mortgage. If the court does not do this I would appreciate and do ask the court for an opportunity to extend this petition for rehearing in order that I may show wherein the statements harmful to me are not based on any sub-

stantial or believable evidence in the record.

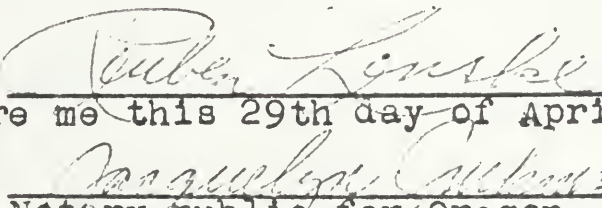

Petitioner

State of Oregon)
)
County of Multnomah)

I, Reuben Lenske, being first duly sworn, on oath depose and say that the redemption period of one year expired in the within foreclosure suit and that Magner Knutsen could have but did not redeem the property; that I did not participate in the foreclosure in any way; that the Government bid the property in for the amount of the mortgage and costs and obtained clear title after the redemption period expired;

That I was in trial for almost a whole week in a jury case after receipt of the opinion in this case on April 16, 1969 and have not had time to complete my petition for rehearing or to append the necessary documents to support this affidavit within the few days I have had available between April 16, 1969 and this date, which is the 14th day since the opinion was filed; but that, given an opportunity, I can do both; that I believe that all issues in this case are moot except the one of damages, which was properly determined by this court.

Subscribed and sworn to before me this 29th day of April, 1969


Notary public for Oregon
My commission expires Jan. 16, 1971

